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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Case No. 1:19-cr-227
(LVJ)

v.

March 21, 2024

JOSEPH BONGIOVANNI ,

Defendant.

TRANSCRIPT EXCERPT - TESTIMONY OF BRIAN A. BURNS
BEFORE THE HONORABLE LAWRENCE J. VILARDO
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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* * * *

(Excerpt commenced at 3:55 p.m.)

(Jury present.)

11 THE COURT: The government can call its next witness.

12 **MR. COOPER:** Judge, the government calls Special
13 Agent Brian Burns.

15 **B R I A N A. B U R N S**, having been duly called and sworn,
16 testified as follows:

17 | MR. COOPER: May I inquire, Judge?

DIRECT EXAMINATION BY MR. COOPER:

21 | Q. Good afternoon, Special Agent Burns.

22 A. Good afternoon, Mr. Cooper.

23 Q. Would you please tell the jury a little bit about where
24 you grew up?

25 A. I grew up -- I was born in Buffalo, raised predominantly

03:56PM 1 in the Tonawanda area, and moved back to Buffalo and stayed
03:56PM 2 there until I left the area.

03:56PM 3 Q. Okay. How far did you go in school?

03:56PM 4 A. I got a masters.

03:56PM 5 Q. And what's your educational background like generally?

03:56PM 6 A. Yeah. I went to University of Buffalo, got a BS in

03:56PM 7 pharmacy. And then I got a masters in business

03:56PM 8 administration.

03:56PM 9 Q. After you graduated from pharmacy school, did you work as
03:56PM 10 a pharmacist?

03:56PM 11 A. Yes, I was a --

03:56PM 12 Q. How -- sorry, go ahead.

03:56PM 13 A. -- I was a licensed pharmacist for three years.

03:56PM 14 Q. How did you like working as a pharmacist?

03:57PM 15 A. It was nice. It wasn't overly interesting some days. A
03:57PM 16 little repetitive.

03:57PM 17 Q. Did you decide to try a different career?

03:57PM 18 A. Yes, I did.

03:57PM 19 Q. What did you do?

03:57PM 20 A. I joined the FBI.

03:57PM 21 Q. Was that more interesting?

03:57PM 22 A. Definitely interesting most days.

03:57PM 23 Q. Okay. Can you describe for the jury a little bit about
03:57PM 24 the training you received as a special agent with the FBI?

03:57PM 25 A. Sure. I entered the academy in October of 1998. I was

03:57PM 1 there for approximately four months. You learn
03:57PM 2 constitutional law, federal criminal law, you learn, kind of,
03:57PM 3 tactics so you can effectuate a search warrant, execute
03:57PM 4 search warrants, arrests safely, you learn firearms, you
03:57PM 5 learn interviews, interviews, interrogations, policies
03:57PM 6 procedures, tactical surveillance, tactical driving,
03:57PM 7 policy -- that covers just about most of it.

03:57PM 8 Q. And after you received that initial training, is that at
03:57PM 9 Quantico?

03:57PM 10 A. That's at Quantico, yes.

03:57PM 11 Q. Okay. And then were you transferred to a specific field
03:58PM 12 office?

03:58PM 13 A. Yes, I was assigned the Memphis, Tennessee office of the
03:58PM 14 FBI.

03:58PM 15 Q. And what years were you at the Memphis, Tennessee office?

03:58PM 16 A. '99 to 2008.

03:58PM 17 Q. What kinds of work did you do at the Memphis, Tennessee
03:58PM 18 office?

03:58PM 19 A. Initially, I did predominantly narcotics investigations.

03:58PM 20 Q. Did you handle a bunch of those?

03:58PM 21 A. Yes, quite a few.

03:58PM 22 Q. Okay. After handling a bunch of narcotics
03:58PM 23 investigations, did you transition into a different type of
03:58PM 24 work?

03:58PM 25 A. Yeah, I started doing more public corruption, kind of law

03:58PM 1 enforcement corruption. It aligned itself with the drug
03:58PM 2 aspect, so law enforcement corruption, narcotics nexus, and
03:58PM 3 then I eventually kind of segued to public officials and
03:58PM 4 elected officials, things like that.

03:58PM 5 Q. And in 2008, you described that as kind of the end of
03:58PM 6 your time in the Tennessee office. Where did you go after
03:58PM 7 that?

03:58PM 8 A. Yes, I was able to get back to the Western New York area,
03:58PM 9 and I was initially assigned to the Niagara Falls resident
03:58PM 10 agency. We had a small office there, and I was there for a
03:59PM 11 couple of years. And they shut that office down, and I was
03:59PM 12 transferred to Buffalo.

03:59PM 13 Q. What group did you work in at the Buffalo office?

03:59PM 14 A. White collar crime.

03:59PM 15 Q. And does that white collar crime group also cover public
03:59PM 16 corruption cases?

03:59PM 17 A. They do. That's the responsibilities of the white collar
03:59PM 18 crime squad.

03:59PM 19 Q. And has that been your focus since 2008?

03:59PM 20 A. Predominantly. I've had a couple civil rights and a few
03:59PM 21 fraud cases here and there.

03:59PM 22 **MR. COOPER:** Okay. Judge, I think the next topic
03:59PM 23 that I have to get into is something we just want to come up
03:59PM 24 on briefly.

03:59PM 25 **THE COURT:** Sure.

03:59PM 1 (Sidebar discussion held on the record.)

03:59PM 2 **MR. COOPER:** By way of background for the Court,
03:59PM 3 there was some testimony from Shane Nastoff about an
03:59PM 4 investigation that he conduct into an individual named Anthony
03:59PM 5 Anastasia.

03:59PM 6 **THE COURT:** Yeah.

03:59PM 7 **MR. COOPER:** And then some comments that the
03:59PM 8 defendant made to Nastoff about, I think, pardon my French,
04:00PM 9 about getting shit for the Anthony Anastasia arrest.

04:00PM 10 Special Agent Burns and the FBI had a
04:00PM 11 semi-contemporaneous investigation into Gables, Joe Mesi, that
04:00PM 12 involved Anthony Anastasia.

04:00PM 13 So I outlined, I think, about three questions for
04:00PM 14 counsel a week or two ago that I intended to cover with
04:00PM 15 Special Agent Burns, and I gave them what I intended to ask
04:00PM 16 and what I intended to elicit. And Mr. MacKay indicated he
04:00PM 17 wanted to come up and address it, so now I'll turn it over to
04:00PM 18 him.

04:00PM 19 **MR. MacKAY:** So there's three points. To lay the
04:00PM 20 timeline out, my understanding is investigation by FBI is '09
04:00PM 21 into end of 2010, they execute some search warrants at the
04:00PM 22 Gables bartender's house, Steve Brucato, Anthony Anastasia,
04:00PM 23 and they interviewed Joe Mesi.

04:00PM 24 **THE COURT:** Okay.

04:00PM 25 **MR. MacKAY:** That's when they get Joe Mesi as a

04:00PM 1 confidential human source.

04:00PM 2 Now, fast forward to 2011, you recall Shane Nastoff
04:01PM 3 testifying that's when Anthony Anastasia's arrested by the
04:01PM 4 DEA.

04:01PM 5 **THE COURT:** That's when --

04:01PM 6 **MR. MacKAY:** That's when Anthony Anastasia's arrested
04:01PM 7 by DEA.

04:01PM 8 **THE COURT:** Okay.

04:01PM 9 **MR. MacKAY:** And it arises based on a fast-moving tip
04:01PM 10 on the Richard Himbury case. That's the one where Nastoff is
04:01PM 11 tracking Himbury. Himbury gives off his -- somebody owes him
04:01PM 12 money, and they kind of act that same day and arrest Anthony
04:01PM 13 Anastasia.

04:01PM 14 The DEA doesn't charge Anthony Anastasia until
04:01PM 15 several years later, I think it's '14 or '15. He pleads
04:01PM 16 guilty and is sentenced.

04:01PM 17 I'm not -- one of the points is that Agent Burns, as
04:01PM 18 an FBI agent, in this capacity is aware of the DEA arrest of
04:01PM 19 Anthony Anastasia. I guess I don't really have an issue with
04:01PM 20 that. But the 2009-2010 investigation of -- surrounding
04:01PM 21 Gables, to me the objection is to relevance, I guess, because
04:02PM 22 it doesn't -- I'm not sure how it connects to DEA activity.

04:02PM 23 **THE COURT:** So you're going to ask about the
04:02PM 24 defendant saying that he had a hard time when Anthony
04:02PM 25 Anastasia was arrested; is that the point?

04:02PM 1 **MR. COOPER:** Well, no, that came out through Nastoff.
04:02PM 2 What I intend to ask Special Agent Burns about is the
04:02PM 3 existence of this FBI investigation, and then the coordination
04:02PM 4 that occurred between FBI and DEA, which ultimately, it's the
04:02PM 5 government's position, leads to the defendant tipping off
04:02PM 6 Selva and then Serio to stay away from Gables and Anthony
04:02PM 7 Anastasia because there was an investigation going on there.
04:02PM 8 Serio testified about it.

04:02PM 9 **THE COURT:** Why isn't that -- why doesn't the fact
04:02PM 10 that there was an investigation in 2009 and 2010 to which the
04:02PM 11 defendant might have been privy leading to his knowledge, why
04:02PM 12 isn't that relevant regardless of when it was?

04:02PM 13 **MR. MacKAY:** So from everything I've reviewed, it's
04:02PM 14 not clear the DEA knows all about the '09, '10 investigation,
04:03PM 15 because that's an FBI Safe Streets Task Force. It's entirely
04:03PM 16 on that side, it doesn't involve the DEA.

04:03PM 17 DEA, they're sort of proceeding on one track, and
04:03PM 18 suddenly DEA comes in and sort of cuts that investigation off,
04:03PM 19 as far as I understand, by way of the sudden Richard Hembury
04:03PM 20 tip. So it's my understanding there's no, really,
04:03PM 21 knowledge --

04:03PM 22 **THE COURT:** There's no connection between the 2009
04:03PM 23 and 2010 investigation and what happened in --

04:03PM 24 **MR. MacKAY:** In 2011 a year later.

04:03PM 25 **MR. COOPER:** I think I can relay that foundation

04:03PM 1 without getting into the substance too much. And so if you
04:03PM 2 let me ask the witness about whether there was an FBI
04:03PM 3 investigation in 2009 that dovetailed and involved
04:03PM 4 coordination with DEA later into the same target, I expect the
04:03PM 5 answer is going to be yes. And so that will lay the
04:03PM 6 foundation of what they're objecting to.

04:03PM 7 **MR. MacKAY:** I'm not sure how it goes back to
04:03PM 8 Bongiovanni's knowledge. As I understand it, once DEA swoops
04:03PM 9 in, and everybody knows in DEA, then the FBI backs off and
04:03PM 10 says we can't go any further with this because now DEA took it
04:04PM 11 over and it's going to compromise --

04:04PM 12 **THE COURT:** That happens when?

04:04PM 13 **MR. MacKAY:** That happens in 2011 after --

04:04PM 14 **THE COURT:** Okay, so --

04:04PM 15 **MR. COOPER:** And, so, I think that the testimony
04:04PM 16 involved from Serio was that he was tipped off about Gables
04:04PM 17 and Mesi.

04:04PM 18 Mesi wasn't a part of the DEA investigation, he was
04:04PM 19 part of the FBI investigation. And if the defendant passed
04:04PM 20 that information, he had to have known about the FBI
04:04PM 21 investigation, that's why it's relevant. Essentially
04:04PM 22 corroborating what Selva said that Mesi was a source, or that
04:04PM 23 Mesi was someone you should stay away from.

04:04PM 24 I'm not getting deep into it.

04:04PM 25 **THE COURT:** I think he can establish that the FBI --

04:04PM 1 that the DEA and the FBI investigation were cross pollinated,
04:04PM 2 or the DEA took over the FBI investigation, which would have
04:04PM 3 given Bongiovanni the opportunity to find out about that.
04:04PM 4 That that's -- I think that's fair game.

04:04PM 5 **MR. MacKAY:** Right. And I just want to make a record
04:04PM 6 that as far as all the documents I've reviewed, I don't
04:04PM 7 believe that DEA was privy to who the confidential human
04:05PM 8 sources were on the FBI side of things. And then Serio's
04:05PM 9 testimony is --

04:05PM 10 **THE COURT:** Can't you cross-examine him?

04:05PM 11 **MR. MacKAY:** I guess I can, but I guess if that link
04:05PM 12 is never made, it becomes confusing to the jury of how do they
04:05PM 13 know.

04:05PM 14 **THE COURT:** But -- but -- but he's going to make
04:05PM 15 that --

04:05PM 16 **MR. COOPER:** I expect to make a link that there was
04:05PM 17 deconfliction and discussion between the two agencies, and I
04:05PM 18 think it's a very reasonable inference for the jury to draw
04:05PM 19 that the defendant somehow becomes aware of it because he tips
04:05PM 20 off Lou Selva. Stay away from Gables and Mesi.

04:05PM 21 **THE COURT:** And there is testimony that he tipped off
04:05PM 22 Lou Selva to stay away from Gables and Mesi.

04:05PM 23 **MR. MacKAY:** Two years -- at least two to four years
04:05PM 24 later.

04:05PM 25 **MR. COOPER:** But it came out of this FBI

04:05PM 1 investigation. DEA didn't have Mesi as a source.

04:05PM 2 **MR. TRIPI:** I would also add that Serio also
04:05PM 3 testified that he heard from -- I believe it was Masecchia,
04:05PM 4 but don't quote me on that, but Serio definitely testified he
04:05PM 5 said he learned that Gables and Mesi were under investigation.
04:05PM 6 So, this goes right to the people who were the core of the
04:05PM 7 conspiracy.

04:05PM 8 **THE COURT:** Yeah, I think that's fair game.

04:05PM 9 **MR. MacKAY:** I note my objection.

04:05PM 10 **THE COURT:** Yeah, you did. And you did a good job
04:05PM 11 arguing.

04:06PM 12 (End of sidebar discussion.)

04:06PM 13 **BY MR. COOPER:**

04:06PM 14 Q. Special Agent Burns, did you hear testimony from Lou
04:06PM 15 Selva during the course of this trial that he was tipped off
04:06PM 16 that Baby Joe Mesi and Gables Bar were the subject of an
04:06PM 17 ongoing investigation by federal law enforcement?

04:06PM 18 A. Yes.

04:06PM 19 Q. Did you hear testimony from Ron Serio that he was tipped
04:06PM 20 off that Baby Joe Mesi and Gables Bar were the subject of an
04:06PM 21 ongoing investigation by federal law enforcement?

04:06PM 22 A. Yes.

04:06PM 23 Q. Do you know who Baby Joe Mesi is?

04:06PM 24 A. Yes, I do.

04:06PM 25 Q. Who is he?

04:06PM 1 A. He was a professional boxer from the Western New York
04:06PM 2 area, and rose pretty high into the boxing ranks.

04:06PM 3 Q. Okay. And what's Gables?

04:06PM 4 A. It was a bar located on Hertel Avenue in proximity to
04:06PM 5 Crestwood and Colvin.

04:06PM 6 Q. Is Gables known to be frequented by any specific type of
04:06PM 7 group of people?

04:06PM 8 A. It's a North Buffalo bar. I mean, based on our
04:06PM 9 investigation, there was some Italian Organized Crime figures
04:06PM 10 that operated out of there.

04:07PM 11 Q. Was it known to be a bar that law enforcement frequented?

04:07PM 12 A. Some law enforcement.

04:07PM 13 Q. Did you hear Special Agent Nastoff testify that the
04:07PM 14 defendant at one point made a comment to him referencing that
04:07PM 15 Anastasia said Bongo had screwed him over?

04:07PM 16 A. Yes, I did.

04:07PM 17 Q. Special Agent Burns, in 2009, were you involved in an FBI
04:07PM 18 investigation into IOC and public corruption?

04:07PM 19 A. Yes, I was.

04:07PM 20 Q. Was Gables bar a part of that investigation?

04:07PM 21 A. Yes.

04:07PM 22 Q. Was it the focus of that investigation?

04:07PM 23 A. Gables, specifically there was -- the investigation
04:07PM 24 centered on two individuals that worked there, Anthony
04:07PM 25 Anastasia, Steven Brucato, that were distributing cocaine

04:07PM 1 from the bar, in proximity of the bar.

04:07PM 2 Additionally, there was a public corruption aspect
04:08PM 3 related to some law enforcement officers that frequented
04:08PM 4 there that appeared to be users of cocaine, and were possibly
04:08PM 5 providing information about law enforcement activities to
04:08PM 6 individuals that hung out there including, Anastasia and
04:08PM 7 Brucato.

04:08PM 8 Q. Was Tom Doctor one of those law enforcement officers that
04:08PM 9 came up as a subject of your investigation?

04:08PM 10 A. Yes, he was one of them.

04:08PM 11 Q. Did FBI ultimately arrest Anthony Anastasia related to
04:08PM 12 that investigation?

04:08PM 13 A. FBI did arrest him briefly. And then he ended up waiving
04:08PM 14 and agreeing to cooperate, but he did not.

04:08PM 15 Q. Okay. Did there come a time when you became aware of a
04:08PM 16 DEA investigation occurring semi-contemporaneously with that
04:08PM 17 FBI investigation?

04:08PM 18 A. Yeah, it's kind of shortly thereafter. Anastasia does
04:09PM 19 not continue cooperating, and he's distributing narcotics
04:09PM 20 again. And we ultimately end up -- well, the investigation
04:09PM 21 advances, Anastasia ultimately becomes the target of a DEA
04:09PM 22 investigation, and the two investigations kind of conclude
04:09PM 23 with a prosecution of Anastasia.

04:09PM 24 Q. Was there cross pollination, so to speak, between the FBI
04:09PM 25 investigation and the DEA investigation?

04:09PM 1 A. Eventually.

04:09PM 2 Q. Okay. And was there some deconfliction or meetings that
04:09PM 3 occurred between the FBI and the DEA about those
04:09PM 4 investigations?

04:09PM 5 A. There was, with the U.S. Attorney's Office on a decision
04:09PM 6 to prosecute -- just to clarify, I mean, the FBI one was
04:09PM 7 separate and apart initially. The DEA developed their own.
04:09PM 8 And then they kind of merged with a resolution of the
04:09PM 9 investigation.

04:09PM 10 Q. And so when you say they merged, was there a meeting that
04:09PM 11 discussed information that the FBI had developed, as well as
04:09PM 12 information that the DEA had developed?

04:09PM 13 A. There was, yeah, coordination with the U.S. Attorney's
04:10PM 14 Office on how to resolve the investigation.

04:10PM 15 Q. Okay. And did that ultimately conclude with the DEA
04:10PM 16 keeping the -- the -- I don't want to say stat, but keeping
04:10PM 17 the case?

04:10PM 18 A. And charging the -- finished the prosecution of the
04:10PM 19 Anastasia part of it.

04:10PM 20 Q. Okay. Was Mesi -- you mentioned Mesi before. Did Mesi
04:10PM 21 become a source during that FBI investigation?

04:10PM 22 A. Yes, that's what I was trying to -- I thought that's what
04:10PM 23 you were going with earlier, but, yes.

04:10PM 24 Mesi, as part of Brucato's cooperation, he was consuming
04:10PM 25 some narcotics, some cocaine at Brucato's house. And we

04:10PM 1 ended up basically detaining him, speaking with him, and he
04:10PM 2 agreed to cooperate going forward. And that was kind of a
04:10PM 3 focus that I particularly had related to the -- because of
04:10PM 4 the public corruption aspect of it.

04:10PM 5 Q. Got it. I'd like to move on now. I want to speak with
04:10PM 6 you about January of 2019. Were you working in the white
04:10PM 7 collar unit of the FBI at that time?

04:10PM 8 A. Yes, I was.

04:11PM 9 Q. Okay. And did there come a time when you received a
04:11PM 10 brief on the investigation into Joseph Bongiovanni?

04:11PM 11 A. In January of 2019.

04:11PM 12 Q. Okay. And who was at that brief? Like, what agencies
04:11PM 13 participated in that?

04:11PM 14 A. HSI. Along with -- HSI, FBI, a senior management at my
04:11PM 15 office. Some senior management from HSI. And high-ranking
04:11PM 16 members of the U.S. Attorney's Office.

04:11PM 17 Q. And was that the first time you became aware of the
04:11PM 18 investigation into Joseph Bongiovanni?

04:11PM 19 A. I had become aware of it just earlier either on that day
04:11PM 20 or the -- or the day before. Because I had spoken with then
04:11PM 21 U.S. Attorney J.P. Kennedy, and he had asked me about the
04:11PM 22 FBI's involvement in this case.

04:11PM 23 **MR. MacKAY:** Objection, hearsay.

04:11PM 24 **THE COURT:** Sustained.

04:11PM 25

04:11PM

1 BY MR. COOPER:

2 Q. Yeah, I'm not asking you about a conversation you had
3 with J.P. Kennedy. But generally, it was January 2019 when
4 you became aware of or involved with the Bongiovanni
5 investigation?

6 A. Yes, January of 2019.

7 Q. Okay. Were you the lead case agent at that time?

8 A. Yes, I was.

9 Q. Okay. From the FBI?

10 A. From the FBI's part.

11 Q. Okay. And do you know Curtis Ryan?

12 A. Yes.

13 Q. Was he involved in the investigation at that time?

14 A. Yeah, he was at the meeting.

15 Q. By June of 2019, had you become increasingly more
16 involved in the investigation?

17 A. Yes.

18 Q. Since 2019, have you and the FBI continued to work on the
19 investigation?

20 A. Yes, we have.

21 Q. And would you describe that as a shared investigation
22 with Homeland Security Investigations?

23 A. Yes, definitely.

24 Q. Are you familiar with the different witnesses involved in
25 the case?

04:12PM 1 A. Intimately familiar.

04:12PM 2 Q. Are you familiar with the evidence in the case?

04:12PM 3 A. Intimately familiar with the evidence in this case.

04:12PM 4 Q. Were you present for the search warrant that was executed

04:12PM 5 at Joseph Bongiovanni's residence?

04:12PM 6 A. Yes.

04:12PM 7 Q. Okay. And just for the record, are you familiar with

04:12PM 8 what Joe Bongiovanni looks like?

04:12PM 9 A. Yes, I am.

04:12PM 10 Q. Is he in court?

04:12PM 11 A. Yes, he is.

04:12PM 12 Q. Can you point him out and identify an article of his

04:12PM 13 clothing?

04:12PM 14 A. With the defense counsel, wearing the red and blue

04:12PM 15 striped tie, in the center.

04:12PM 16 **MR. COOPER:** Judge, for the record, indicating the

04:13PM 17 defendant?

04:13PM 18 **THE COURT:** Yes.

04:13PM 19 **MR. COOPER:** Thank you.

04:13PM 20 I believe Exhibit 103-36 is already in evidence but I

04:13PM 21 just want to confirm with counsel before I ask to pull it up.

04:13PM 22 It's the --

04:13PM 23 Judge, I'd ask to pull up for everybody what I

04:13PM 24 believe is already in evidence, Government Exhibit 103-36.

04:13PM 25 **THE COURT:** Have you confirmed it's already in

04:13PM 1 evidence?

04:13PM 2 **MR. MacKAY:** It is, Judge.

04:13PM 3 **MR. SINGER:** This is the one that was subject to
04:13PM 4 connection, so that was satisfied.

04:13PM 5 **BY MR. COOPER:**

04:13PM 6 Q. Do you recognize this photograph?

04:13PM 7 A. Yes, I do.

04:13PM 8 Q. Do you recognize what's depicted in the photograph?

04:13PM 9 A. Yes.

04:13PM 10 Q. Is this a box that was in the defendant's residence?

04:13PM 11 A. Yes, in the basement on the day of the search warrant.

04:13PM 12 June 6th, 2019, at 85 Alder Place.

04:13PM 13 Q. Okay. And does this fairly and accurately depict the box
04:13PM 14 that was in the defendant's basement when his house was
04:14PM 15 searched in June of 2019?

04:14PM 16 A. Yes, it does.

04:14PM 17 **MR. COOPER:** Okay. You can take that down

04:14PM 18 Ms. Champoux, thank you.

04:14PM 19 **BY MR. COOPER:**

04:14PM 20 Q. Were you also present for a search warrant at Pharaoh's
04:14PM 21 Gentlemen's Club?

04:14PM 22 A. Yes, I was.

04:14PM 23 Q. And are you aware of whether DVRs or recording equipment
04:14PM 24 were recovered from Pharaoh's Gentlemen's Club?

04:14PM 25 A. Yes, I am.

04:14PM 1 Q. How many of them were recovered?

04:14PM 2 A. There were -- three DVRs were recovered, and each DVR
04:14PM 3 recorded from numerous cameras.

04:14PM 4 Q. Okay. And is it fair to say that this isn't a one-agent
04:14PM 5 case?

04:14PM 6 A. I'm sorry?

04:14PM 7 Q. Is this a one-agent case?

04:14PM 8 A. No. Absolutely not.

04:14PM 9 Q. Okay. This is a pretty large investigative team?

04:14PM 10 A. Yes.

04:14PM 11 Q. Are you aware of whether these DVRs were reviewed by the
04:14PM 12 investigative team?

04:14PM 13 A. Yes, they were.

04:14PM 14 Q. Okay. And are you aware of how long the DVRs stored
04:14PM 15 footage for?

04:14PM 16 A. Those three DVRs seized from there? Yes, I am.

04:14PM 17 Q. How long did they store footage for?

04:14PM 18 A. Two of the DVRs stored footage for approximately two
04:14PM 19 weeks. One of the DVRs stored footage for approximately
04:14PM 20 seven weeks.

04:15PM 21 Q. So if the DVR stored, at a maximum, seven weeks of
04:15PM 22 footage, would they have contained footage from 2013?

04:15PM 23 A. Would not.

04:15PM 24 Q. Would they have contained footage from 2014?

04:15PM 25 A. No.

04:15PM 1 Q. 2015?

04:15PM 2 A. No.

04:15PM 3 Q. 2016?

04:15PM 4 A. No.

04:15PM 5 Q. 2017?

04:15PM 6 A. No.

04:15PM 7 Q. 2018?

04:15PM 8 A. No.

04:15PM 9 Q. What year were they seized in?

04:15PM 10 A. They were seized on December 12, 2019.

04:15PM 11 Q. I'm not going to do math, we're gonna move on.

04:15PM 12 Are you aware of whether Peter Gerace's phone was seized

04:15PM 13 during a border crossing?

04:15PM 14 A. Yes, there was a seizure of a border crossing.

04:15PM 15 Q. Okay. Have you reviewed the extraction from his cell

04:15PM 16 phone?

04:15PM 17 A. Yes, I have.

04:15PM 18 Q. Have you reviewed a report containing some of the

04:15PM 19 contacts contained in Peter Gerace's cell phone?

04:15PM 20 A. Yes, I have.

04:15PM 21 Q. And did you compare that report to the cell phone

04:15PM 22 extraction itself?

04:15PM 23 A. Yes, I did.

04:15PM 24 **MR. COOPER:** Judge may I approach the witness?

04:16PM 25 **THE COURT:** You may.

04:16PM

1 BY MR. COOPER:

2 Q. I'm going to show you what's been marked for

3 identification as Government Exhibit 310. Do you recognize
4 that?

5 A. Yes, I do.

6 Q. What do you recognize that to be?

7 A. That's an extraction of the Peter Gerace's telephone that
8 was seized -- I believe it was 4/27/2019 when he entered at
9 Newark.

10 Q. Okay. And have you reviewed the contents of that
11 extraction?

12 A. Yes, I have.

13 Q. How do you know that what's on that little white
14 rectangle is the extraction from Peter's cell phone?

15 A. From the initials on it, as well as my putting it into a
16 computer and viewing it.

17 Q. So you looked at what's on that disk yourself?

18 A. Yes, I have.

19 Q. And then you wrote your initials on it?

20 A. Yes, I did -- well, I did not initial on this one.

21 Q. Okay.

22 A. But I did review this earlier, well, many times
23 throughout the course of this investigation.

24 Q. I'm holding what's marked for identification now as
25 Government Exhibit 310A as in apples, T as in tomatoes.

04:17PM 1 **MR. COOPER:** May I approach the witness?

04:17PM 2 **THE COURT:** Sure.

04:17PM 3 **MR. COOPER:** Thank you.

04:17PM 4 **BY MR. COOPER:**

04:17PM 5 Q. Do you recognize Government Exhibit 310AT for
04:17PM 6 identification?

04:17PM 7 A. Yes, I do.

04:17PM 8 Q. What do you recognize that to be?

04:17PM 9 A. These are some selected contacts out of the image of the
04:17PM 10 Gerace telephone.

04:17PM 11 Q. Have you reviewed that before you sat in that chair
04:17PM 12 today?

04:17PM 13 A. Yes, numerous times.

04:17PM 14 Q. And does 310AT for identification fairly and accurately
04:17PM 15 depict some of the contacts contained in Peter Gerace's
04:17PM 16 iPhone from the 2019 extraction?

04:17PM 17 A. Yes, it does.

04:17PM 18 **MR. COOPER:** Judge, with that foundation I would
04:17PM 19 offer 310AT into evidence.

04:17PM 20 **MR. MacKAY:** No objection, Your Honor.

04:17PM 21 **THE COURT:** Received without objection.

04:17PM 22 **(GOV Exhibit 310AT was received in evidence.)**

04:17PM 23 **MR. COOPER:** May I approach the witness?

04:17PM 24 **THE COURT:** You may.

04:17PM 25

04:17PM

1 BY MR. COOPER:

2 Q. Special Agent Burns, I'm going to ask you about a number
3 of different people now and whether they were contacts in
4 Peter Gerace's cell phone. And if you need to, you can
5 review what's already in evidence as 310AT. Okay?

6 A. Yep.

7 Q. Was Jeff Anzelone a contact in Peter Gerace's phone?

8 A. Yes, he was.

9 Q. How about Wayne Anderson?

10 A. Yes, he was.

11 Q. How about Joe Bella?

12 A. Yes, he was.

13 Q. How about Frank Burkhardt?

14 A. Yes, he was.

15 Q. Was there a contact called Jessica, Charm?

16 A. Yes, there is.

17 Q. Do you know an individual in this investigation who goes
18 by the alias Charm?

19 A. Yes, Jessica Leyland. That's her dancer name, Charm.

20 Q. Was there a contact in Gerace's phone with the name Dan
21 Derenda?

22 A. Yes, there is.

23 Q. Who's that?

24 A. Dan Derenda was the former Buffalo Police Commissioner
25 for the City of Buffalo, and then he's a close associate of

04:18PM 1 Peter Gerace.

04:18PM 2 Q. And are you aware of whether Dan Derenda wrote a letter
04:18PM 3 on behalf of Peter Gerace for his prior felony conviction?

04:18PM 4 A. Yes, I've reviewed that letter.

04:18PM 5 Q. Is there an entry in Peter Gerace's contact section with
04:19PM 6 the name Paulie, Hot Dog?

04:19PM 7 A. Yes, there is.

04:19PM 8 Q. Who is that?

04:19PM 9 A. Paul Francoforte. He goes by the name Hot Dog.

04:19PM 10 Q. Is there an entry with the name Marcus?

04:19PM 11 A. Yes, there is.

04:19PM 12 Q. Has that name come up during the course of the Pharaoh's
04:19PM 13 and Peter Gerace investigation?

04:19PM 14 A. Numerous times.

04:19PM 15 Q. And what's Marcus's full name?

04:19PM 16 A. His true name is Marcus Hatten, but he goes by Marcus
04:19PM 17 Black, or Black. Two aliases.

04:19PM 18 Q. Is there an entry for Michael Masecchia?

04:19PM 19 A. Yes.

04:19PM 20 Q. Heard that name before?

04:19PM 21 A. Many times.

04:19PM 22 Q. Is there an entry for Joseph or Joe Palmieri?

04:19PM 23 A. Yes, I have.

04:19PM 24 Q. Who is Joe Palmieri?

04:19PM 25 A. He's a now currently retired Town of Tonawanda Police

04:19PM 1 Department officer who was a partner, or in the same group
04:19PM 2 with Joseph Bongiovanni at the DEA.

04:19PM 3 Q. Is there an entry for an individual named Derek Roy?

04:19PM 4 A. Yes, there is.

04:19PM 5 Q. Who's that person?

04:19PM 6 A. He was a -- now retired Buffalo Sabres player.

04:19PM 7 Q. How about is there a Matt Barnaby?

04:19PM 8 A. Yes, there is.

04:19PM 9 Q. Who is that person?

04:19PM 10 A. He is also a now retired professional hockey player that
04:20PM 11 played for the Buffalo Sabres for a number of years.

04:20PM 12 Q. Is there an individual named K.L.?

04:20PM 13 A. Yes, there was.

04:20PM 14 Q. How about an individual named Lindsay Schuh?

04:20PM 15 A. Yes, there is.

04:20PM 16 Q. How about Tom Napoli?

04:20PM 17 A. Yes, there is.

04:20PM 18 Q. How about Tom Doctor?

04:20PM 19 A. Yes. It's under Doctor, but it's Tom Doctor's telephone
04:20PM 20 number.

04:20PM 21 Q. Is there an individual named Greg Trotter?

04:20PM 22 A. Yes, there is.

04:20PM 23 Q. Who's Greg Trotter?

04:20PM 24 A. Greg Trotter is a detective -- detective sergeant or
04:20PM 25 detective with the Amherst Police Department.

04:20PM 1 Q. Did you hear Katrina Nigro testify on Tuesday that Greg
04:20PM 2 Trotter was a corrupt law enforcement officer?

04:20PM 3 A. Yes, I did.

04:20PM 4 Q. Are you aware of whether Greg Trotter is actually a law
04:20PM 5 enforcement officer?

04:20PM 6 A. He's with the -- a detective with the Amherst Police
04:20PM 7 Department.

04:20PM 8 Q. Is he currently charged with making false --

04:20PM 9 **MR. MacKAY:** Objection. Objection, Your Honor,
04:20PM 10 relevance.

04:20PM 11 **MR. COOPER:** I can come up and explain it.

04:20PM 12 **THE COURT:** Okay.

04:21PM 13 (Sidebar discussion held on the record.)

04:21PM 14 **MR. COOPER:** Judge, the -- I think we've come up
04:21PM 15 several times on this same topic with respect to explaining
04:21PM 16 why certain individuals are not being called as government
04:21PM 17 witnesses. He's unavailable to us, he's charged.

04:21PM 18 **MR. MacKAY:** A couple things. Number one, Judge,
04:21PM 19 it's an allegation. Number 2, it's essentially bolstering
04:21PM 20 Ms. Nigro's testimony.

04:21PM 21 **THE COURT:** Yeah, and if -- you're gonna argue that
04:21PM 22 this guy shouldn't be called as a witness --

04:21PM 23 **MR. MacKAY:** No, not Trotter.

04:21PM 24 **MR. COOPER:** Okay, sorry. I felt on notice with the
04:21PM 25 missing witness comments, and so --

04:21PM 1 **THE COURT:** I understand.

04:21PM 2 **MR. COOPER:** -- but I'll move on from that. I'll

04:21PM 3 withdraw the question.

04:21PM 4 **THE COURT:** Fine. Okay. Great.

04:21PM 5 (End of sidebar discussion.)

04:21PM 6 **MR. COOPER:** Judge, I'll withdraw that question and

04:21PM 7 move on.

04:21PM 8 **BY MR. COOPER:**

04:21PM 9 Q. Was there a contact under the name Tommy O?

04:22PM 10 A. Yes.

04:22PM 11 Q. Is that an alias for an individual you're familiar with?

04:22PM 12 A. Yes, very familiar. It's John Ermin, he's the general

04:22PM 13 manager of Pharaoh's, and he was present and I interviewed on

04:22PM 14 the day of the search warrant at Pharaoh's Gentlemen's Club

04:22PM 15 on December 12, 2019.

04:22PM 16 Q. Was there an entry for an individual name Frank Tripi?

04:22PM 17 A. Yes, there was.

04:22PM 18 Q. Was there an entry for an individual named Joe Tomasello?

04:22PM 19 A. Yes, there was.

04:22PM 20 Q. Was there an entry for an individual named Phlycia Ray?

04:22PM 21 A. Yes, there was.

04:22PM 22 Q. Do you know Phlycia Ray to be the maiden name for another

04:22PM 23 individual?

04:22PM 24 A. Yes.

04:22PM 25 Q. Okay. What's the other individual -- or, what's that

04:22PM 1 individual's current name?

04:22PM 2 A. Phlycia Hunt.

04:22PM 3 Q. Phlycia Hunt?

04:22PM 4 A. Yes, her maiden name was Phlycia Ray.

04:22PM 5 Q. Was there a contact stored as Anthony, bro, B-R-O?

04:22PM 6 A. Yes.

04:22PM 7 Q. Do you know Peter Gerace to have a bro named Anthony?

04:22PM 8 A. Yes, Anthony Gerace was his brother.

04:22PM 9 Q. Is the defendant's work cell phone number 716-818-0966?

04:23PM 10 A. Stored as a contact?

04:23PM 11 Q. I'm just asking if that's his work cell phone number.

04:23PM 12 A. That is his work cell.

04:23PM 13 Q. Or, was.

04:23PM 14 A. Yes, was, that's was the one he turned in.

04:23PM 15 Q. Was that stored in Peter Gerace's phone as a contact?

04:23PM 16 A. It was not stored as a contact.

04:23PM 17 Q. Are you aware that the defendant's post-retirement phone

04:23PM 18 number was 716-507-2784?

04:23PM 19 A. Yes, I'm aware.

04:23PM 20 Q. Was that stored in Gerace's 2019 phone extraction as a

04:23PM 21 contact?

04:23PM 22 A. That was not stored as a contact.

04:23PM 23 Q. Special Agent Burns, have you reviewed the Ron Serio

04:23PM 24 contacts report which is already in evidence as Government

04:23PM 25 Exhibit 46?

04:23PM 1 A. Yes, I have.

04:23PM 2 Q. Have you reviewed Bongiovanni's contacts report contained
04:23PM 3 in Government Exhibit 109F?

04:23PM 4 A. Yes, I have.

04:23PM 5 Q. Have you reviewed -- and let me ask a clarifying question
04:23PM 6 first. In 109F, is that the contacts report from
04:23PM 7 Bongiovanni's post-retirement phone?

04:23PM 8 A. Yes, the post-retirement phone.

04:24PM 9 Q. Okay. And the preretirement phone was the DEA phone,
04:24PM 10 right?

04:24PM 11 A. That was the one that was wiped.

04:24PM 12 Q. Okay. Have you reviewed Selva's contacts report
04:24PM 13 contained in Government Exhibit 208D?

04:24PM 14 A. Yes, I have.

04:24PM 15 Q. And we just discussed that you reviewed Gerace's contacts
04:24PM 16 which is in Government Exhibit 310AT, right?

04:24PM 17 A. Correct.

04:24PM 18 Q. Have you reviewed Bella's contacts contained in
04:24PM 19 Government Exhibit 312-E?

04:24PM 20 A. Yes, I have.

04:24PM 21 Q. I'm going hand you what's marked for identification as
04:24PM 22 Government Exhibit 367.

04:24PM 23 **MR. COOPER:** Judge, can I approach?

04:24PM 24 **THE COURT:** Sure.

04:24PM 25 **MR. COOPER:** Thank you.

04:24PM 1 **BY MR. COOPER:**

04:24PM 2 Q. Take a moment and look at that, and I'll be right back.

04:24PM 3 A. Certainly.

04:24PM 4 Q. Do you recognize that document?

04:24PM 5 A. Yes, I do.

04:24PM 6 Q. What do you recognize that to be?

04:24PM 7 A. It's a chart that was created utilizing the contacts from
04:24PM 8 the individuals you just mentioned, Ron Serio, Bongiovanni,
04:25PM 9 Selva, Gerace, and Bella.

04:25PM 10 And then on the left-hand side of the chart is various
04:25PM 11 names of individuals whose -- are relevant to this
04:25PM 12 investigation, there's names that come up in the course of
04:25PM 13 this trial.

04:25PM 14 Q. And does that chart fairly and accurately depict some of
04:25PM 15 the overlapping contacts that were found in the different
04:25PM 16 contacts sections that we just discussed?

04:25PM 17 A. Yes, it does.

04:25PM 18 **MR. COOPER:** Judge, I would offer Government
04:25PM 19 Exhibit 367 into evidence.

04:25PM 20 **MR. MacKAY:** No objection, Your Honor.

04:25PM 21 **THE COURT:** Received without objection.

04:25PM 22 **(GOV Exhibit 367 was received in evidence.)**

04:25PM 23 **MR. COOPER:** Can we publish Government Exhibit 367
04:25PM 24 for everybody, please?

25

04:25PM

1 BY MR. COOPER:

2 Q. All right. So Special Agent Burns, on the left side of
3 this document where we have all these names, are these the
4 individuals whose names show up as stored contacts in the
5 phones listed on the top?

6 A. That's correct.

7 Q. Okay. Do you see that name Paul Francoforte that we
8 spoke about earlier?

9 A. Yes, I do.

10 Q. Is that also known as Hot Dog?

11 A. That's Hot Dog.

12 Q. And who is -- is Hot Dog in Ron Serio's phone?

13 A. Hot Dog is in, yes, Ron Serio's phone.

14 Q. Is he in the defendant's phone?

15 A. Bongiovanni, yes, that's.

16 Q. Is he in Peter Gerace's phone?

17 A. Yes, he is.

18 Q. How about -- let's go down to Frank Parisi. Do you see
19 that line?

20 A. Parisi? Yes, I do.

21 MR. COOPER: Can we highlight that one, Ms. Champoux?

22 Thank you, ma'am.

23 BY MR. COOPER:

24 Q. Is he in Ron Serio's phone?

25 A. Yes, he's in all of them.

04:26PM 1 Q. He's in all of them?

04:26PM 2 A. Yes, he is.

04:26PM 3 Q. Okay. And all of them would be Serio, Bongiovanni,
04:26PM 4 Selva, Gerace, and Bella; is that correct?

04:26PM 5 A. That's correct.

04:26PM 6 Q. How about Lou Selva, is his name down there on the left?

04:27PM 7 A. I see it.

04:27PM 8 Q. Is he in the Serio phone?

04:27PM 9 A. Yes.

04:27PM 10 Q. Is he in the defendant's phone?

04:27PM 11 A. Yes.

04:27PM 12 **MR. COOPER:** You can take that down, Ms. Champoux,
04:27PM 13 thank you.

04:27PM 14 **BY MR. COOPER:**

04:27PM 15 Q. Are you familiar with the name Frank Tripi?

04:27PM 16 A. Yes, I am.

04:27PM 17 Q. Okay. Are you familiar with Frank Tripi's phone number?

04:27PM 18 A. Yes, I am.

04:27PM 19 Q. Special Agent Burns, did you see Frank Tripi stored as a
04:27PM 20 contact in Ron Serio's phone extraction?

04:27PM 21 A. Yes.

04:27PM 22 Q. Was the phone number associated with Frank Tripi
04:27PM 23 716-429-6445?

04:27PM 24 A. Yes, it is.

04:27PM 25 Q. Okay. And did you review Government Exhibit 358,

04:27PM 1 Defendant Bongiovanni's phone records, for his work cell
04:27PM 2 phone ending in 0966?

04:27PM 3 A. Yes, the toll records, not the extraction. The actual --

04:27PM 4 Q. Okay. And to be clear, the extraction had nothing on it,
04:27PM 5 right?

04:27PM 6 A. Right, because the phone was wiped. But I just wanted to

04:28PM 7 clarify, it was the toll records, unlike this exhibit which

04:28PM 8 is extractions, it was cell phone records.

04:28PM 9 Q. Okay. And when you say phone records, you mean records
04:28PM 10 that show incoming and outgoing calls?

04:28PM 11 A. That's correct.

04:28PM 12 Q. Calls that a person receives, right?

04:28PM 13 A. And sends.

04:28PM 14 Q. And calls --

04:28PM 15 A. Made, I should say send.

04:28PM 16 Q. Did you check Government Exhibit 358, the call records

04:28PM 17 for the defendant's work cell phone, to see if he had any

04:28PM 18 phone contact with Frank Tripi at the phone number ending in

04:28PM 19 6445?

04:28PM 20 A. Yes, I did.

04:28PM 21 Q. Did they have any phone contact?

04:28PM 22 A. In October of 2018, they had phone contact.

04:28PM 23 Q. Okay. Did they have one phone call, or multiple phone
04:28PM 24 calls?

04:28PM 25 A. It was three phone calls.

04:28PM 1 Q. Okay. And about how long was the longest call, if you
04:28PM 2 remember?

04:28PM 3 A. Approximately six minutes.

04:28PM 4 Q. Special Agent Burns, are you aware of whether Peter
04:28PM 5 Gerace has a prior felony conviction?

04:28PM 6 A. Yes, I am familiar.

04:28PM 7 Q. And did that occur on or -- or, did the conviction occur
04:28PM 8 on or around 2006?

04:29PM 9 A. Approximately.

04:29PM 10 Q. Was Gerace a convicted felon before the 2011 trip to Las
04:29PM 11 Vegas that he went on?

04:29PM 12 A. Absolutely.

04:29PM 13 Q. Special Agent Burns, were you present in the courtroom
04:29PM 14 when Katrina Nigro testified that Lillo Brancato would go
04:29PM 15 upstairs with dancers at Pharaoh's Gentlemen's Club?

04:29PM 16 A. Yes, I was.

04:29PM 17 Q. Do you know who Lillo Brancato is?

04:29PM 18 A. I do.

04:29PM 19 Q. Who is he?

04:29PM 20 A. He's an actor out of New York City -- or, I'm sorry,
04:29PM 21 residing down in New York City, and he acted in the Bronx
04:29PM 22 Tale?

04:29PM 23 Q. Have you ever seen A Bronx Tale?

04:29PM 24 A. I have not, Mr. Cooper.

04:29PM 25 Q. Have you -- have you familiarized yourself what Lillo

04:29PM 1 Brancato looks like?

04:29PM 2 A. Yes, I have.

04:29PM 3 Q. And I'd like to bring up for the jury Government

04:29PM 4 Exhibit 310D already in evidence. And Government

04:29PM 5 Exhibit 310D text messages between Peter Gerace and the

04:30PM 6 defendant?

04:30PM 7 A. Yes, they are.

04:30PM 8 **MR. COOPER:** Ms. Champoux, can we pull up page 75.

04:30PM 9 And can you zoom in on the photo there? Just get the people

04:30PM 10 at the table, do you want have to get the whole thing. Thank

04:30PM 11 you, ma'am.

04:30PM 12 **BY MR. COOPER:**

04:30PM 13 Q. Is Peter Gerace in that picture?

04:30PM 14 A. Yes, he is.

04:30PM 15 Q. Can you circle his head? Is Lillo Brancato in that

04:30PM 16 picture?

04:30PM 17 A. He is.

04:30PM 18 Q. Is there anybody else in that picture that you recognize?

04:30PM 19 A. I do.

04:30PM 20 Q. Okay. Who do you recognize?

04:30PM 21 A. Fred Roach, he's a boxing trainer.

04:30PM 22 Q. As far as you know, is he a celebrity?

04:30PM 23 A. If you consider a very prominent boxing -- I mean, he

04:30PM 24 coached heavyweight champions. So, yes, I would say he's a

04:30PM 25 celebrity.

04:30PM 1 Q. Okay.

04:30PM 2 A. Depends on your definition of celebrity, Mr. Cooper, I
04:30PM 3 guess.

04:30PM 4 **MR. COOPER:** Ms. Champoux, can you unzoom from that
04:30PM 5 and go to page 21. There you go. Perfect. Thank you.

04:30PM 6 **BY MR. COOPER:**

04:31PM 7 Q. Do you recognize the individuals in this photo?

04:31PM 8 A. Yes, I do.

04:31PM 9 Q. Who's on the left?

04:31PM 10 A. Lillo Brancato.

04:31PM 11 Q. Who's on the right?

04:31PM 12 A. Peter Gerace.

04:31PM 13 Q. Do you recognize the background of that photograph?

04:31PM 14 A. It appears to be Pharaoh's.

04:31PM 15 **MR. COOPER:** You can take that down, Ms. Champoux.

04:31PM 16 Thank you, ma'am.

04:31PM 17 **BY MR. COOPER:**

04:31PM 18 Q. I want to talk to you a little bit more about Hot Dog,
04:31PM 19 okay?

04:31PM 20 A. Certainly.

04:31PM 21 Q. In the law enforcement community, is he believed be an
04:31PM 22 associate of Italian Organized Crime?

04:31PM 23 A. Yes, he is.

04:31PM 24 **MR. COOPER:** Ms. Champoux, can you on the left side
04:31PM 25 of the screen please pull up Government Exhibit 8A. Thank

04:31PM 1 you. And move forward to -- move forward to page 347. This
04:31PM 2 is already in evidence.

04:31PM 3 And on the right side of the screen, can you pull up
04:32PM 4 Government Exhibit 26-D, and can you go to page 4 of that
04:32PM 5 document.

04:32PM 6 **BY MR. COOPER:**

04:32PM 7 Q. Special Agent Burns, have you reviewed both of these
04:32PM 8 documents?

04:32PM 9 A. Yes, I have.

04:32PM 10 Q. On the left side of the screen, is this a subpoena for
04:32PM 11 subscriber information from the defendant's case file
04:32PM 12 C2-13-0026?

04:32PM 13 A. Yes, I observed that within that file.

04:32PM 14 Q. Okay. And who is the subscriber that's being searched in
04:32PM 15 C2-13-0026?

04:32PM 16 A. Paul Francoforte, a/k/a Hot Dog.

04:32PM 17 Q. Okay. On the right side of the screen, is this a DARTS
04:32PM 18 notification from February of 2019 which would have provided
04:32PM 19 notification to the defendant of Special Agent Casullo's
04:32PM 20 DARTS entry of Paul Francoforte's phone number had the
04:32PM 21 defendant not already retired?

04:32PM 22 A. Yes, if he had not retired, it would have notified him.

04:32PM 23 **MR. COOPER:** Okay. Ms. Champoux, you can take those
04:32PM 24 two down, please. And now on the left side of the screen if
04:33PM 25 you will pull up Government Exhibit 393. And on the right

04:33PM 1 side of the screen, if you can pull up Government
04:33PM 2 Exhibit 3713A, which is in evidence.

04:33PM 3 **BY MR. COOPER:**

04:33PM 4 Q. Okay. On the left side screen, Special Agent Burns, can
04:33PM 5 you circle Hot Dog for the jury?

04:33PM 6 And can you circle the reputed former Boss of Italian
04:33PM 7 Organized Crime in Buffalo?

04:33PM 8 **MR. COOPER:** And, Ms. Champoux, can we zoom in on the
04:33PM 9 names of the two individuals that were traveling together on
04:33PM 10 the right side of the screen?

04:33PM 11 **BY MR. COOPER:**

04:33PM 12 Q. Who are the two individuals that traveled together in
04:33PM 13 2012 in Government Exhibit 3713A?

04:33PM 14 A. Paul Francoforte a/k/a Hot Dog and Joseph Bongiovanni.

04:33PM 15 **MR. COOPER:** All right. You can take those down,
04:33PM 16 Ms. Champoux.

04:34PM 17 **BY MR. COOPER:**

04:34PM 18 Q. Special Agent Burns, are you familiar with DEA case
04:34PM 19 number C2-13-0026?

04:34PM 20 A. Yes, extremely familiar.

04:34PM 21 Q. Have you reviewed the official file?

04:34PM 22 A. The official file of both the paper portion of it and the
04:34PM 23 digital portion, I have.

04:34PM 24 Q. Okay. And have you reviewed the working file that the
04:34PM 25 defendant brought home and had in his basement?

04:34PM 1 A. Yes, I have.

04:34PM 2 Q. I'd like to direct your attention to Government
04:34PM 3 Exhibit 8M in evidence.

04:34PM 4 **MR. COOPER:** Can we pull that up?

04:34PM 5 **BY MR. COOPER:**

04:34PM 6 Q. Have you reviewed this document?

04:34PM 7 A. Yes, I have.

04:34PM 8 Q. Is it your understanding that this is a DEA-6 summary
04:34PM 9 report?

04:34PM 10 A. That's what it is.

04:34PM 11 Q. Okay. And is this the first -- essentially the first
04:34PM 12 DEA-6 filed in case number C2-13-0026?

04:34PM 13 A. Yes, it is.

04:34PM 14 **MR. COOPER:** Ms. Champoux, I'm sorry, to do this.

04:35PM 15 Can we take this down. And on the left side of the screen,
04:35PM 16 can you pull up Government Exhibit 8A-6 which is a submarked
04:35PM 17 exhibit of page 3 from Government Exhibit 8A. Can we put that
04:35PM 18 on the left? And then I'm going to have you bring up 8M on
04:35PM 19 the right.

04:35PM 20 **BY MR. COOPER:**

04:35PM 21 Q. Special Agent Burns, if you need, we'll zoom in, just let
04:35PM 22 me know. What was the date of Government Exhibit 8M? What
04:35PM 23 date was it prepared?

04:35PM 24 A. 11/28/2012.

04:35PM 25 Q. Are you able to see it okay?

04:35PM 1 A. Yes, I don't need this.

04:35PM 2 Q. Okay. Does the summary report mention Ron Serio at all?

04:35PM 3 A. It does not.

04:35PM 4 Q. Does it mention the Serio DTO at all?

04:35PM 5 A. It does not reference the Serio drug-trafficking
04:35PM 6 organization.

04:35PM 7 Q. Okay. Now you mentioned that you reviewed the entire

04:35PM 8 file of C2-13-0026, as well as the working file from the

04:36PM 9 defendant's basement. Is there any explanation at all in any
04:36PM 10 of the materials that you reviewed indicating a factual basis
04:36PM 11 in the file linking Ron Serio to Wayne Anderson's arrest?

04:36PM 12 A. Nothing in the file.

04:36PM 13 Q. Can you please draw a line through the -- on the left

04:36PM 14 side of the screen, on 8A-6, through the indication for a
04:36PM 15 summary report from November 28, 2012?

04:36PM 16 A. I'm sorry?

04:36PM 17 Q. Can you please draw a line through the summary report

04:36PM 18 that we're looking at on the right. Just mark that one off.

04:36PM 19 Thank you. Okay.

04:36PM 20 Is it your understanding that Anderson was caught by the
04:36PM 21 New York State Police receiving hundreds of pounds of
04:36PM 22 marijuana?

04:36PM 23 A. It was approximately 269 pounds of marijuana.

04:36PM 24 Q. Okay. And is it your understanding that currency was
04:36PM 25 seized?

04:36PM 1 A. Yes, approximately -- or not approximately, \$27,000 worth
04:37PM 2 of currency was seized.

04:37PM 3 Q. Have you reviewed Wayne Anderson's criminal history?

04:37PM 4 A. Yes, I have.

04:37PM 5 Q. Was he ever convicted of any criminal offense related to
04:37PM 6 the 2012 marijuana arrest?

04:37PM 7 A. I reviewed the criminal history. There's a notation of
04:37PM 8 an arrest, and there was no indication of any conviction or
04:37PM 9 any resolution to that case.

04:37PM 10 Q. Okay.

04:37PM 11 **MR. COOPER:** Ms. Champoux, can we leave up 8A-6 on
04:37PM 12 the left, and just take down 8M on the right.

04:37PM 13 That's okay. Can we bring up 8A-6 on the left again?
04:37PM 14 And then on the right, bring up 8A and go to page 72.

04:37PM 15 **BY MR. COOPER:**

04:37PM 16 Q. Special Agent Burns do you recognize what this is on the
04:37PM 17 right side of the screen, page 72 of Exhibit 8A?

04:37PM 18 **MR. MacKAY:** Judge, I'm going to object at this point
04:37PM 19 on cumulative grounds. If we're going to go through most of
04:37PM 20 these documents again that we did at the beginning of the case
04:37PM 21 when we covered the actual witnesses who dealt with them.

04:38PM 22 **MR. COOPER:** Judge, I haven't even asked a question
04:38PM 23 about the document yet, so I don't know how counsel can
04:38PM 24 predict whether it's cumulative or not.

04:38PM 25 **THE COURT:** Okay. Next question. Overruled, next

04:38PM 1 question.

04:38PM 2 **BY MR. COOPER:**

04:38PM 3 Q. Did the defendant report that Anderson pled guilty in
04:38PM 4 New York State Court?

04:38PM 5 A. In this document, which was located --

04:38PM 6 **MR. MacKAY:** Objection, Judge. Now I'm raising the
04:38PM 7 objection again that we've dealt with it before.

04:38PM 8 **MR. COOPER:** Judge, I'm developing the witness while
04:38PM 9 I worked through the case file, and so I can come up and
04:38PM 10 proffer about how this is going to differ from --

04:38PM 11 **THE COURT:** No, overruled.

04:38PM 12 **BY MR. COOPER:**

04:38PM 13 Q. Did the defendant report that Wayne Anderson was
04:38PM 14 convicted?

04:38PM 15 A. Yes, in this document located in that file, I located
04:38PM 16 this document, and it stated that on January 4th, 2015,
04:38PM 17 Anderson pled in New York State Court and sentenced to
04:38PM 18 36 months probation.

04:38PM 19 **MR. COOPER:** Ms. Champoux, can you zoom in on
04:38PM 20 paragraph 23 at the bottom of the right -- the document on the
04:38PM 21 right? Yep.

04:38PM 22 **BY MR. COOPER:**

04:39PM 23 Q. Is that what you're talking about?

04:39PM 24 A. It's easier to read now.

04:39PM 25 Q. I should have done that first, I'm sorry. Is that

04:39PM 1 consistent with Wayne Anderson's criminal history?

04:39PM 2 A. That is not consistent with his criminal history.

04:39PM 3 **MR. COOPER:** Okay. Can you zoom out of that,

04:39PM 4 Ms. Champoux? And now on the right, can we go to page 19?

04:39PM 5 **BY MR. COOPER:**

04:39PM 6 Q. Is this a DEA-6 summary report for acquisition of U.S.

04:39PM 7 currency seized from Wayne Anderson?

04:39PM 8 A. Yes.

04:39PM 9 Q. What's the date that this report was prepared?

04:39PM 10 A. Prepared on January 17th, 2013.

04:39PM 11 Q. Does it mention Ron Serio at all?

04:39PM 12 A. It does not mention Ron Serio.

04:39PM 13 Q. Did the defendant author this document?

04:39PM 14 A. No, this was authored by Clint Calloway, or TFO Clint
04:39PM 15 Calloway.

04:39PM 16 Q. Is this document authored on January 17th, 2013,

04:39PM 17 documented on the case status checklist on the left side of
04:39PM 18 your screen?

04:39PM 19 A. Yes, it is.

04:39PM 20 Q. Can you cross it off?

04:39PM 21 A. Certainly.

04:39PM 22 **MR. COOPER:** Ms. Champoux, can we keep 8A-6 up on the
04:40PM 23 left, and on the right pull up Exhibit 8K.

04:40PM 24 **BY MR. COOPER:**

04:40PM 25 Q. Do you recognize Exhibit 8K?

04:40PM

1 A. Yes, I do.

04:40PM

2 Q. Is this a DEA-6 report of an investigation?

04:40PM

3 A. Yes, it's a DEA-6.

04:40PM

4 Q. What was the date that this DEA-6 was submitted?

04:40PM

5 A. The day prepared is 2/7 of 2013.

04:40PM

6 Q. Okay. Were you present for the testimony of New York
7 State Police Investigator O'Rourke?

04:40PM

8 A. Yes, I was.

04:40PM

9 Q. Did he testify that he was trying to set up a proffer
10 interview with Wayne Anderson?

04:40PM

11 A. He did not.

04:40PM

12 Q. Did O'Rourke testify about whether the defendant ever
13 called him to discuss a proffer interview with Anderson?

04:40PM

14 A. Not to discuss a proffer.

04:40PM

15 Q. Can you cross off the February 7, 2013 case status report
16 on the left? Thank you.

04:40PM

17 **MR. COOPER:** Ms. Champoux, on the right, can you pull
18 up Government Exhibit 8I.

04:40PM

19 **BY MR. COOPER:**

04:41PM

20 Q. Before we move on to 8I, Special Agent Burns, just take a
21 look on the left side of your screen. Is there an entry on
22 February 22nd, 2013?

04:41PM

23 A. There is.

04:41PM

24 Q. Okay. And what's it say there?

04:41PM

25 A. Cross file from C2-12-0090.

04:41PM 1 Q. Did you review that report?

04:41PM 2 A. Yes, I have.

04:41PM 3 Q. Did the defendant draft it?

04:41PM 4 A. He did not.

04:41PM 5 Q. Who drafted it?

04:41PM 6 A. Shane Nastoff.

04:41PM 7 Q. Did it have anything to do with the defendant's

04:41PM 8 investigative activity into Ron Serio?

04:41PM 9 A. Not the defendant's investigative activity.

04:41PM 10 Q. Was it Shane Nastoff's investigative activity?

04:41PM 11 A. Yes, it was.

04:41PM 12 Q. Can you cross it off on the left there.

04:41PM 13 Now in 8I, what are we looking at there?

04:41PM 14 A. 8I is the initial debriefing of the confidential source,

04:41PM 15 R.K.

04:41PM 16 Q. Have you reviewed that document?

04:41PM 17 A. Yes, I have.

04:41PM 18 Q. Who drafted that report?

04:41PM 19 A. Joseph Bongiovanni did.

04:41PM 20 Q. What was the date that R.K. was interviewed?

04:42PM 21 A. April 30th, 2013.

04:42PM 22 Q. And what was the date the report was prepared?

04:42PM 23 A. The date prepared is 5/2 of 2013.

04:42PM 24 Q. Who does the defendant list as other people involved in

04:42PM 25 the interview of R.K.?

04:42PM 1 A. Special Agent Shane Nastoff, and Group Supervisor
04:42PM 2 Flickinger.

04:42PM 3 Q. Does Government Exhibit 8I indicate that R.K. had access
04:42PM 4 to leadership of the Ron Serio DTO?

04:42PM 5 A. Yes, it's outlined in there.

04:42PM 6 Q. Does it indicate that R.K. had access to other members
04:42PM 7 and associates of the Serio DTO?

04:42PM 8 A. Yes, it does.

04:42PM 9 Q. Is that reflected on Government Exhibit 8A-6?

04:42PM 10 A. Yes, it is.

04:42PM 11 Q. Okay. Is that the entry for May 2nd, 2013?

04:42PM 12 A. Yes, it is.

04:42PM 13 Q. Okay. Can you cross that one off?

04:42PM 14 A. Yep.

04:42PM 15 **MR. MacKAY:** Judge, can we approach on this, please?

04:42PM 16 **THE COURT:** Sure.

04:43PM 17 (Sidebar discussion on the record.)

04:43PM 18 **MR. MacKAY:** I have to object again, particularly if
04:43PM 19 we're going to continue to go through the rest of the file
04:43PM 20 as cumulative. Essentially making a closing argument here of
04:43PM 21 rehashing of everything that was said in the beginning.

04:43PM 22 **THE COURT:** No, he's summarizing it, and he's
04:43PM 23 summarizing it in what would be an effective way, but I'm not
04:43PM 24 going to stop him from doing that. That's just good
04:43PM 25 lawyering, I'm not gonna stop good lawyering. But I think

04:43PM 1 it's a summary of stuff that's already in evidence.

04:43PM 2 **MR. MacKAY:** Understood.

04:43PM 3 (Sidebar discussion ended.)

04:43PM 4 **MR. COOPER:** Ms. Champoux, can you pull down 8I on
04:43PM 5 the right, and pull up Government Exhibit 8H.

04:43PM 6 **BY MR. COOPER:**

04:43PM 7 Q. Special Agent Burns, after that May 2nd, 2013, entry, the
04:43PM 8 initial debriefing of R.K., what's the next entry on
04:44PM 9 Government Exhibit 8A-6?

04:44PM 10 A. The June 18th, 2013 surveillance of 82 Sycamore.

04:44PM 11 Q. Okay. And we're looking at 8H on the right side of the
04:44PM 12 screen; do you see that?

04:44PM 13 A. That's correct.

04:44PM 14 Q. Okay. And who drafted that report?

04:44PM 15 A. Special Agent Bongiovanni drafted it.

04:44PM 16 Q. Okay. And who's listed as another officer?

04:44PM 17 A. Special Agent David Leary.

04:44PM 18 Q. Were you present for the testimony of Special Agent Leary
04:44PM 19 regarding his surveillance efforts on June 3rd, 2013 at 82
04:44PM 20 Sycamore Street?

04:44PM 21 A. Yes, I was.

04:44PM 22 Q. Was he the person who was conducting the surveillance
04:44PM 23 that's reported in the report of investigation?

04:44PM 24 A. Yes.

04:44PM 25 Q. Does the report of investigation indicate that the

04:44PM 1 defendant participated in the surveillance?

04:44PM 2 A. It does not.

04:44PM 3 Q. Do you have any professional experience conducting
04:44PM 4 surveillance in criminal investigations?

04:44PM 5 A. Quite a bit.

04:44PM 6 Q. Quite a bit?

04:44PM 7 A. Right. It's a little dated, but I used to do it a lot
04:44PM 8 more in my -- when I worked narcotics predominantly.

04:45PM 9 Q. Is surveillance generally a solo activity, or is that
04:45PM 10 something agents generally do in groups?

04:45PM 11 A. Well, I mean, if I'm going by an address just to grab
04:45PM 12 tags, like, collect license plates, see if somebody's home,
04:45PM 13 things like that, I mean, I'll do -- I would do activities
04:45PM 14 like that by myself.

04:45PM 15 But it I was doing a true surveillance where we want to
04:45PM 16 sit on it, follow vehicles, maybe pick somebody off, then
04:45PM 17 that would be done with a number of agents --

04:45PM 18 Q. Based on your training --

04:45PM 19 A. -- or officers, as well. I'm sorry, acts and officers.

04:45PM 20 Q. That's okay. Based on your training and experience, is
04:45PM 21 surveillance more effective on a narcotics target when it's
04:45PM 22 involving a group of agents and officers?

04:45PM 23 A. Absolutely.

04:45PM 24 Q. Are you aware of the risk associated with doing
04:45PM 25 surveillance, sometimes referred to as getting made?

04:45PM 1 A. Yeah, there's always a risk in surveillance of getting
04:45PM 2 burned.

04:45PM 3 Q. What does it mean to get burned or get made?

04:45PM 4 A. That means the target just figured out that people are
04:46PM 5 surveilling or individuals are surveilling them.

04:46PM 6 Q. Is that something you try to avoid as a law enforcement
04:46PM 7 officer?

04:46PM 8 A. You try, yes. You absolutely try.

04:46PM 9 Q. Is it essentially always a risk when conducting
04:46PM 10 surveillance?

04:46PM 11 A. Absolutely.

04:46PM 12 Q. Can you mitigate the risk of getting burned, as you put
04:46PM 13 it, by using multiple agents to conduct a surveillance?

04:46PM 14 A. Yes, that mitigates it quite a bit, the more vehicles you
04:46PM 15 have on the street.

04:46PM 16 Q. Based on your training and experience, does using
04:46PM 17 multiple agents to get involved in a surveillance assist in
04:46PM 18 avoiding detection by the target?

04:46PM 19 A. Absolutely. There's different techniques you can use.
04:46PM 20 You put people on a paralegal, side streets.

04:46PM 21 Q. Based your training and experience, does the risk of
04:46PM 22 getting made prevent law enforcement from utilizing
04:46PM 23 surveillance as a technique?

04:46PM 24 A. No, I mean, sometimes you get made, and they're gonna be
04:46PM 25 more savvy to it and next time, and maybe you'll change your

04:46PM 1 tactics, but they usually keep -- they'll keep their criminal
04:46PM 2 activity ongoing.

04:46PM 3 Q. Now you said you used to work a lot of narcotics
04:46PM 4 investigations when you were in Memphis, right?

04:46PM 5 A. That's right.

04:46PM 6 Q. Based on your experience conducting narcotics
04:47PM 7 investigations, is surveillance a big part of what you do?

04:47PM 8 A. It's an extremely important part of narcotics
04:47PM 9 investigations.

04:47PM 10 Q. If you were conducting a narcotics investigation, and one
04:47PM 11 of your teammates was out on a solo surveillance, and
04:47PM 12 identified the targets at a warehouse, would that be a
04:47PM 13 situation where you could move the investigation forward
04:47PM 14 rapidly?

04:47PM 15 A. Yes. That happens from time to time, and you get bodies
04:47PM 16 on the streets.

04:47PM 17 Q. Have you worked on investigations before where
04:47PM 18 surveillance led to a break in the case?

04:47PM 19 A. Yes, many times.

04:47PM 20 Q. Is that pretty common?

04:47PM 21 A. In narcotics investigations, absolutely.

04:47PM 22 Q. Are you familiar with a technique in narcotics
04:47PM 23 investigations to set up surveillance on a potential or
04:47PM 24 suspected drug dealer's residence?

04:47PM 25 A. Yes.

04:47PM 1 Q. Is that something that's done?

04:47PM 2 A. Yes, very common.

04:48PM 3 Q. Okay. And have you heard of the term picking off

04:48PM 4 customers before?

04:48PM 5 A. Yeah.

04:48PM 6 Q. What does it mean to pick off customers?

04:48PM 7 A. It means to do a traffic stop. You try to see somebody

04:48PM 8 leaving, you don't know if they purchased narcotics or not.

04:48PM 9 But what you do is create a traffic stop, oftentimes with a

04:48PM 10 marked unit, so it looks as if they were maybe conducting a

04:48PM 11 traffic infraction or something. If do you it far enough

04:48PM 12 away, even if they're carrying narcotics, then likely they'll

04:48PM 13 believe it was just a regular traffic stop, so you really

04:48PM 14 haven't burned yourself.

04:48PM 15 Q. Can you -- if you catch an individual leaving with

04:48PM 16 narcotics, could you charge that individual?

04:48PM 17 A. Oh, absolutely. Flip them.

04:48PM 18 Q. What do you mean by flip them?

04:48PM 19 A. I mean getting their cooperation, because now they have

04:48PM 20 drugs in their hands, and you've got leverage over them.

04:48PM 21 Q. Can that help you work your way up towards the target?

04:48PM 22 A. Yeah. I mean, most narcotics investigations, that's the

04:48PM 23 goal of the investigation is to work your way up.

04:48PM 24 Q. So Government Exhibit 8H, that's Dave Leary's

04:49PM 25 surveillance, right?

04:49PM 1 A. Yes.

04:49PM 2 Q. Can you cross off Dave Leary's surveillance on Government
04:49PM 3 Exhibit 8A-6?

04:49PM 4 Other than Government Exhibit 8H which you just crossed
04:49PM 5 off there, are there any DEA-6 reports contained in
04:49PM 6 C2-13-0026 documenting investigative activity?

04:49PM 7 A. Any more investigative activity, or case status?

04:49PM 8 Q. Any investigative activity that's being substantively
04:49PM 9 documented after that Dave Leary surveillance report.

04:49PM 10 A. After that, there's strictly the case status updates.

04:49PM 11 Q. Okay. And based on your review of the file, is there a
04:49PM 12 difference between a case status update, and a substantive
04:49PM 13 report of investigation like Government Exhibit 8H?

04:49PM 14 A. Yes.

04:49PM 15 **MR. COOPER:** Ms. Champoux, on the right side of the
04:50PM 16 screen, can you take down 8H, and can you bring up 22I in
04:50PM 17 evidence?

04:50PM 18 **BY MR. COOPER:**

04:50PM 19 Q. Do you recognize this?

04:50PM 20 A. Yes, I do.

04:50PM 21 **MR. COOPER:** Ms. Champoux, can we zoom in on this
04:50PM 22 middle email here?

04:50PM 23 **BY MR. COOPER:**

04:50PM 24 Q. Do you see the defendant's email to Scott Deming?

04:50PM 25 A. Yes, I do.

04:50PM 1 Q. Can you read it for the jury?

04:50PM 2 A. Thank you, Scott. We are making strides on the street,
04:50PM 3 so we will report soon.

04:50PM 4 Q. What's the date the defendant sent that email?

04:50PM 5 A. May 23rd, 2013.

04:50PM 6 Q. Okay. Is that about three weeks after the initial
04:50PM 7 debriefing of R.K.?

04:50PM 8 A. Yes.

04:50PM 9 Q. That was in late April, right?

04:50PM 10 A. That's correct.

04:50PM 11 Q. Okay. And is it before Dave Leary's surveillance?

04:50PM 12 A. Yes, it is.

04:50PM 13 Q. Okay. After the initial debriefing of R.K. and before
04:50PM 14 Dave Leary's surveillance, were there any documented DEA-6
04:50PM 15 reports of substantive investigative activity?

04:50PM 16 A. There was not.

04:50PM 17 **MR. COOPER:** Ms. Champoux, can you zoom out of that,
04:51PM 18 and take down 22I. Now, Special Agent Burns -- can we bring
04:51PM 19 up 8A-6 on the left again? Thank you.

04:51PM 20 **BY MR. COOPER:**

04:51PM 21 Q. Special Agent Burns, are you aware of some documentation
04:51PM 22 in the file for C2-13-0026 regarding attempts to obtain funds
04:51PM 23 for a buy?

04:51PM 24 A. Yes, I saw I think two separate documents that appear to
04:51PM 25 be requesting funding for undercover purchases.

04:51PM 1 Q. Okay. Is there any documentation in the file that a buy
04:51PM 2 was ever actually attempted?

04:51PM 3 A. There was no DEA-6 or document indicating that any buys
04:51PM 4 were attempted.

04:51PM 5 Q. Is there any documentation or DEA-6 indicating that the
04:51PM 6 defendant used R.K. to make a controlled call into Ron Serio?

04:51PM 7 A. There was no DEA-6 or any items I saw in there that
04:51PM 8 indicated that there was an attempt.

04:51PM 9 Q. Okay. Is there any DEA-6 indicating that the defendant
04:52PM 10 used R.K., the C.S. in this case, to attempt to make a
04:52PM 11 controlled phone call into Frank Burkhardt?

04:52PM 12 A. There was not.

04:52PM 13 Q. How about T.S.?

04:52PM 14 A. There is not.

04:52PM 15 Q. Any reports in the file documenting the location and
04:52PM 16 identification of marijuana grow locations?

04:52PM 17 A. No.

04:52PM 18 Q. Are there any reports between April 30th, 2013, and
04:52PM 19 May 23rd, 2013, documenting specific acts of investigation
04:52PM 20 that actually took place or happened?

04:52PM 21 A. No, there's not.

04:52PM 22 **MR. COOPER:** Ms. Champoux, on the right side of the
04:52PM 23 screen, can you pull up what's in evidence as Government
04:52PM 24 Exhibit 8G. Okay.

25

04:52PM

1 BY MR. COOPER:

04:52PM

2 Q. What's the date that this report was prepared?

04:52PM

3 A. September 11th, 2013.

04:52PM

4 Q. And in box 10 what's the report subject?

04:52PM

5 A. Box 10. Case status.

04:53PM

6 Q. Okay. And is that case status reflected on the left on

04:53PM

7 that checklist we've got going?

04:53PM

8 A. Yes, it is.

04:53PM

9 **MR. COOPER:** Ms. Champoux, on the right, can you zoom
10 in on paragraph 2? All right.

04:53PM

11 BY MR. COOPER:

04:53PM

12 Q. We're not going to read the whole thing, but do you see
13 reference to several surveillances?

04:53PM

14 A. Yes, I do.

04:53PM

15 Q. How many DEA-6 reports documenting surveillance exist in
16 the file for C2-13-0026?

04:53PM

17 A. Just the one from June 18th.

04:53PM

18 Q. Who did that surveillance?

04:53PM

19 A. That was Special Agent David Leary.

04:53PM

20 Q. Okay. Now did you see some pictures in the electronic
21 file?

04:53PM

22 A. I saw, I believe, three.

04:53PM

23 Q. Okay. And was there a picture that appeared to be a
24 white BMW?

04:53PM

25 A. Yes, it was.

04:53PM 1 Q. Did you believe that to be associated with Tom Serio?

04:53PM 2 A. It appeared to be, it indicated it was on Lebrun.

04:53PM 3 Q. Okay. Any DEA-6 report documenting that activity?

04:53PM 4 A. There was not.

04:53PM 5 Q. Do you see in paragraph 2 the reference to agents

04:54PM 6 utilizing air surveillance with the ECSO chopper?

04:54PM 7 A. Yes, I do.

04:54PM 8 Q. Is there a DEA-6 report of investigation in the file

04:54PM 9 documenting any air surveillance at all used in the

04:54PM 10 investigation of this case?

04:54PM 11 A. There is not.

04:54PM 12 Q. Were you present for the testimony of Kevin Caffery, the

04:54PM 13 air pilot for the Erie County Sheriff's Office?

04:54PM 14 A. Yes, I was.

04:54PM 15 Q. Did he testify that he'd ever met the defendant?

04:54PM 16 A. He never met the defendant.

04:54PM 17 Q. Did he say he conducted surveillance on the defendant's

04:54PM 18 behalf?

04:54PM 19 A. He said he did not conduct surveillance on the

04:54PM 20 defendant's behalf.

04:54PM 21 **MR. COOPER:** Okay. You can zoom out of there,

04:54PM 22 Ms. Champoux. Can we cross off that September 11, 2013 case

04:54PM 23 status report? Thank you.

04:54PM 24 Can you take down 8G and now bring up 8F.

04:54PM 25

04:54PM

1 BY MR. COOPER:

2 Q. What's the date that this report was prepared?

3 A. December 31st, 2013.

4 Q. And in box 10, what's this report about?

5 A. Another case status.

6 Q. Okay. So to be clear, this isn't a substantive

7 investigative DEA-6; is that fair?

8 A. That's fair.

9 Q. It's a status update?

10 A. Correct.

11 Q. Okay. Is this the very next DEA-6 chronologically

12 contained in the file after the September 11th 6 that we just

13 looked at?

14 A. Yes, it is.

15 Q. Is this December 31st, 2013 case status report the first

16 time that we see the mention of Remus Nowak mentioned in a

17 case state report, or a 6?

18 A. Yes, it is the first time.

19 Q. Is there any explanation in the case status report as to

20 how Nowak was identified as a supposed member of the Serio

21 DTO?

22 A. There was nothing in the file related to Remus Nowak or

23 how they got there.

24 Q. Does the report explain it?

25 A. It does not.

04:55PM 1 Q. Is there any other report in the file that explained how
04:55PM 2 Nowak was identified as a member of the Serio DTO?

04:56PM 3 A. I reviewed the work -- the file from the basement, I
04:56PM 4 reviewed the other file, and I found no -- any kind of
04:56PM 5 information that -- how Remus Nowak came to be.

04:56PM 6 Q. Special Agent Burns, up until this point, we're up to

04:56PM 7 December 31st, 2013. In the reports that you reviewed so

04:56PM 8 far, is the major drug organization that's being investigated
04:56PM 9 still called the Serio DTO?

04:56PM 10 A. Yes, the Ron Serio DTO.

04:56PM 11 Q. Can you see a sentence in that report in paragraph 2
04:56PM 12 regarding Duncan Motor Sales?

04:56PM 13 A. Yes, concerning Remus Nowak. Nowak is an owner of Duncan
04:56PM 14 Motor Sales, Motor Car Sales located at 2030 Delaware Avenue,
04:56PM 15 Buffalo, New York.

04:56PM 16 Q. Can you read the next sentence?

04:56PM 17 A. Agents have initiated in-depth financial analysis of
04:56PM 18 money lawn -- or, of financial records of Duncan Motor Car
04:57PM 19 Sales in efforts to exposed money laundering and structuring
04:57PM 20 practices.

04:57PM 21 Q. Okay. Was there anything in the file, electronically, in
04:57PM 22 the paper file, or in the working file, that indicated that
04:57PM 23 agents had initiated indepth financial analysis into Duncan
04:57PM 24 Motor Sales?

04:57PM 25 A. None at all.

04:57PM 1 Q. Can you cross off that December 31st, 2013, case status?

04:57PM 2 **MR. COOPER:** And on the right, Ms. Champoux, can we
04:57PM 3 pull up Exhibit 8E.

04:57PM 4 **BY MR. COOPER:**

04:57PM 5 Q. Special Agent Burns, after that December 31st report we
04:57PM 6 just looked at, is the next report in the file
04:57PM 7 chronologically April 7th of 2014?

04:57PM 8 A. Yes, it is.

04:57PM 9 Q. Is this a substantive investigative DEA-6?

04:57PM 10 A. That's, again, a case status, not a substantive
04:57PM 11 investigative DEA-6.

04:57PM 12 Q. Okay. Were there any DEA-6s that are in the file but not
04:57PM 13 listed on the checklist here that you found when you looked?

04:57PM 14 A. Not that I saw.

04:57PM 15 Q. Okay. So is it fair to say it's been about four months
04:58PM 16 since the last case status?

04:58PM 17 A. That's fair.

04:58PM 18 Q. Or three months and change?

04:58PM 19 A. Yeah, three and a half.

04:58PM 20 Q. It's the math again.

04:58PM 21 **MR. COOPER:** In paragraph 2, Ms. Champoux, can you
04:58PM 22 zoom in on paragraph 2?

04:58PM 23 **THE WITNESS:** Thank you.

04:58PM 24 **BY MR. COOPER:**

04:58PM 25 Q. Can read that?

04:58PM 1 A. Yes. Agents are in the processsed of securing a FLIR
04:58PM 2 warrant for the aerial surveillance of 42 Norwalk Avenue,
04:58PM 3 Buffalo, New York. A possible grow operation is believed to
04:58PM 4 be in operation at the address in reference to Remus Nowak.

04:58PM 5 Q. Any mention of Serio at all there?

04:58PM 6 A. No mention of Serio.

04:58PM 7 **MR. COOPER:** Okay. And can you zoom out of that,
04:58PM 8 Ms. Champoux.

04:58PM 9 **BY MR. COOPER:**

04:58PM 10 Q. Is paragraph 3 essentially repeating information from the
04:58PM 11 December 31st case status report?

04:58PM 12 A. Yes. It's not verbatim, but it's sum and substance the
04:58PM 13 same.

04:58PM 14 Q. Okay. So is it fair to say the only new information
04:58PM 15 there is information about Remus Nowak?

04:59PM 16 A. Correct. And the FLIR warrant we just mentioned.

04:59PM 17 Q. Are there any reports or any information contained in the
04:59PM 18 file that explains the source of the statement that Remus
04:59PM 19 Nowak is a major money laundering source for the Serio DTO?

04:59PM 20 A. No, none at all.

04:59PM 21 **THE COURT:** Mr. Cooper, it's 5:00. We're obviously
04:59PM 22 not going to finish today. How much more do you have?

04:59PM 23 **MR. COOPER:** Honestly, like 10-ish minutes, maybe
04:59PM 24 less.

04:59PM 25 **THE COURT:** Okay. So let's finish the direct.

04:59PM 1 **MR. COOPER:** Okay. Thank you, Judge.

04:59PM 2 **BY MR. COOPER:**

04:59PM 3 Q. Special Agent Burns, if you look at paragraph 2, are we
04:59PM 4 still calling it the Serio DTO here? I'm sorry, paragraph 3,
04:59PM 5 I apologize. Are we still calling it the Serio DTO?

04:59PM 6 A. It says agents have identified Remus Nowak, a/k/a Remus.
05:00PM 7 And Nowak is believed to be a major marijuana distributor and
05:00PM 8 money laundering source for the Serio DTO. So we're still
05:00PM 9 talking about the Serio DTO.

05:00PM 10 **MR. COOPER:** Okay. And can you zoom out that
05:00PM 11 Ms. Champoux?

05:00PM 12 Special Agent Burns, can we cross off the April 7,
05:00PM 13 2014 report?

05:00PM 14 And now, Ms. Champoux, on the right, if you can pull
05:00PM 15 up 8D as in David.

05:00PM 16 **BY MR. COOPER:**

05:00PM 17 Q. Is this the very next chronological report in the file?

05:00PM 18 A. Yes, it is.

05:00PM 19 Q. Is this one a substantive 6?

05:00PM 20 A. No. Again, it's a case status, not a substantive
05:00PM 21 investigative 6.

05:00PM 22 Q. Okay. And are there any DEA-6 reports that you found in
05:00PM 23 the file kind of in between April and July of 2014?

05:00PM 24 A. None.

05:00PM 25 Q. Nothing that we just forgot to put on the checklist?

05:00PM 1 A. No, none that I observed.

05:00PM 2 Q. Okay.

05:00PM 3 A. In my review.

05:00PM 4 **MR. COOPER:** Can we zoom in on paragraph 2,

05:00PM 5 Ms. Champoux. Can you move that to the top, or the bottom?

05:00PM 6 Whatever. There you go.

05:00PM 7 **BY MR. COOPER:**

05:00PM 8 Q. Can you read that for the jury?

05:01PM 9 A. Agents continue to work with Amherst PD in an effort to
05:01PM 10 infiltrate the Remus Nowak DTO.

05:01PM 11 Q. We renamed the DTO?

05:01PM 12 A. It states the Remus Nowak DTO. That's the first time
05:01PM 13 I've seen it in the file.

05:01PM 14 Q. It's not the Serio DTO anymore?

05:01PM 15 A. There's not a -- there's a reference to Remus Nowak DTO.

05:01PM 16 **MR. COOPER:** Okay. Can you zoom out of that,
05:01PM 17 Ms. Champoux, and zoom in on paragraph 3.

05:01PM 18 **BY MR. COOPER:**

05:01PM 19 Q. Is paragraph 3 essentially repeating information from the
05:01PM 20 prior three case status reports?

05:01PM 21 A. Yes, very similar.

05:01PM 22 Q. Okay. There, it's still the Serio DTO, right?

05:01PM 23 A. Yes, Nowak's part of it.

05:01PM 24 **MR. COOPER:** Can you zoom out of that, please? Just
05:01PM 25 leave it up for a second. Thank you.

05:01PM

1 BY MR. COOPER:

2 Q. In paragraph 2, do you see the defendant report that he's
3 working now with the Amherst Police Department in an effort
4 to infiltrate the Nowak DTO?

5 A. Yes, I see that.

6 Q. Were you present for the testimony of JoAnn DiNoto?

7 A. Yes, I was.

8 Q. Did she offer to help the defendant investigate the Serio
9 DTO?

10 A. The Serio DTO, yes.

11 Q. Was there any indication that that offer was taken up on?

12 A. No, there was no indication.

13 Q. Okay. Can you cross off that July 7, 2014 status report?

14 MR. COOPER: And now, Ms. Champoux, on the right, if
15 you can you pull up Exhibit 8C.

16 BY MR. COOPER:

17 Q. Is this the very next report in the file after July 7th?

18 A. Yes, it is.

19 Q. Is this one a substantive 6 of investigation?

20 A. No, it's a case status again.

21 Q. Okay. And how is the status going at this point?

22 A. Well, the investigation is pending closure. The
23 confidential informant associated with the case file is no
24 longer viable, and cannot provide credible information in
25 furtherance of this investigation. The agent will not -- it

05:02PM 1 says not prepare this case for closure, but I think that's a
05:02PM 2 typo, will now prepare this case for closure.

05:02PM 3 And then line 3 is the investigation is pending closure.

05:02PM 4 Q. And what's the date this report was prepared?

05:03PM 5 A. November 4, 2014.

05:03PM 6 Q. Are you familiar with when the defendant actually closed
05:03PM 7 out R.K. as a source?

05:03PM 8 A. It was quite a while previously.

05:03PM 9 Q. Does September 9, 2013 sound correct?

05:03PM 10 A. Yes, that sounds accurate.

05:03PM 11 Q. So we're about 14 months past that?

05:03PM 12 A. Correct.

05:03PM 13 Q. Were you present for the testimony of Ron Serio when he
05:03PM 14 said that he would have sold any amount of marijuana to R.K.
05:03PM 15 in the presence of Frank Burkhardt?

05:03PM 16 A. Yes, I was.

05:03PM 17 Q. Can you cross off that November 4, 2014 case status
05:03PM 18 report.

05:03PM 19 **MR. COOPER:** And, Ms. Champoux, on the right can you
05:03PM 20 pull up 8B as in boy.

05:03PM 21 **BY MR. COOPER:**

05:03PM 22 Q. What's the date this report's prepared?

05:03PM 23 A. January 28th, 2015.

05:04PM 24 Q. Can you read paragraph 3?

05:04PM 25 A. This case is now closed.

05:04PM 1 Q. Who's indexed?
05:04PM 2 A. Wayne Anderson and Damien Abbate.

05:04PM 3 Q. Any mention of Ron Serio at all in that report?
05:04PM 4 A. There is no mention of Ron Serio.

05:04PM 5 Q. Okay. And that's from January 28th of 2015?
05:04PM 6 A. That is correct.

05:04PM 7 Q. Can you cross off that January 28, 2015? Okay.
05:04PM 8 Does that cover all the DEA-6s that were contained in
05:04PM 9 C2-13-0026?

05:04PM 10 A. That I observed in there, in my review.
05:04PM 11 Q. Okay. Other than the initial debriefing of R.K., and the
05:04PM 12 surveillance at 82 Sycamore, are there any 6s documenting
05:04PM 13 substantive investigative activity?

05:04PM 14 A. There was not.

05:04PM 15 **MR. COOPER:** Ms. Champoux, can you pull those two
05:04PM 16 down for us. Thank you. And then on the left, can you bring
05:05PM 17 up 8B as in boy. And on the right, can you pull up 22Q.

05:05PM 18 **BY MR. COOPER:**

05:05PM 19 Q. How many months after the defendant closed his file in
05:05PM 20 C2-13-0026 did he send an email to Scott Deming telling him
05:05PM 21 that they were still working the case? How many months
05:05PM 22 later?

05:05PM 23 A. Six months -- or, seven months, I'm sorry. No, six is
05:05PM 24 right.

05:05PM 25 Q. Take your time.

05:05PM 1 A. It's late.

05:05PM 2 Q. Okay. Special Agent Burns, during the course of your
05:05PM 3 career, have you received correspondence from other law
05:05PM 4 enforcement agencies asking you about a target that you've
05:05PM 5 closed an investigation on?

05:05PM 6 A. Occasionally it's happened.

05:05PM 7 Q. Okay. And what's your response been in those situations?

05:05PM 8 A. I was enthusiastically supported whoever wanted to look
05:05PM 9 at one of my old targets. It's usually I closed the
05:06PM 10 investigation because I wasn't able to develop enough
05:06PM 11 information, so I would -- my practice is to extend whatever
05:06PM 12 help I can, pull up old reports, provide any background, and
05:06PM 13 in some cases maybe rejoin their investigation if it makes
05:06PM 14 sense.

05:06PM 15 Q. Has it been your experience that that's common in the law
05:06PM 16 enforcement community?

05:06PM 17 A. Very common.

05:06PM 18 **MR. COOPER:** Judge, may I just have one moment.

05:06PM 19 **THE COURT:** Sure.

05:06PM 20 **BY MR. COOPER:**

05:06PM 21 Q. Special Agent Burns, have you heard the name Peter
05:06PM 22 Militello come up during the course of the trial?

05:06PM 23 A. I have.

05:06PM 24 Q. Is there any reference in the file materials that you
05:06PM 25 reviewed that Peter Militello was a source in the

05:07PM 1 investigation into Ron Serio?

05:07PM 2 A. I saw no reference in the files to that.

05:07PM 3 **MR. COOPER:** Okay. I have no further direct, Judge.

05:07PM 4 **THE COURT:** Okay.

05:07PM 5 (Excerpt concluded at 5:07 p.m.)

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05:07PM 8

05:07PM 9

05:07PM 10 **CERTIFICATE OF REPORTER**

05:07PM 11

05:07PM 12 In accordance with 28, U.S.C., 753(b), I
05:07PM 13 certify that these original notes are a true and correct
05:07PM 14 record of proceedings in the United States District Court for
05:07PM 15 the Western District of New York on March 21, 2024.

05:07PM 16

05:07PM 17

05:07PM 18

s/ Ann M. Sawyer

05:07PM 19 Ann M. Sawyer, FCRR, RPR, CRR

Official Court Reporter

U.S.D.C., W.D.N.Y.

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1
2 **TRANSCRIPT INDEX**3 **EXCERPT OF TESTIMONY OF BRIAN A. BURNS**4 **MARCH 21, 2024**5
6 **W I T N E S S** **P A G E**7 **B R I A N A. B U R N S** 2

8 DIRECT EXAMINATION BY MR. COOPER: 2

9
10
11 **E X H I B I T S** **P A G E**

12 GOV Exhibit 310AT 22

13 GOV Exhibit 367 30

14
15
16
17
18
19
20
21
22
23
24
25